

## CHAPTER 8

### CONDUCT OF PROCEEDINGS

While the calling of Parliament together for its first meeting is formally the prerogative of the Crown, and in practice determined by the executive government, once a session of Parliament is convened and opened, the agenda and conduct of business are matters for determination by each House of Parliament itself. As McHugh J stated in the High Court in *Egan v Willis*:

The history of the procedures of the House of Commons and its effect upon our Westminster system makes it clear that it is a matter for the Council as to the way in which it conducts business and the order of its business ... Of all the great privileges of the House of Commons, none played a greater role in the Commons achieving influence than its capacity to control its own business and to set its own agenda. The view of the Tudor and Stuart monarchs was that the House of Commons was summoned only to vote on the appropriations asked of them, to approve legislation submitted to them and to express opinions on matters of policy only when asked. The House of Commons would not have become the powerful institution that it is if the views of those monarchs had prevailed. The importance of Parliament under the Westminster system is in no small part due to the seemingly inconsequential right of the House of Commons to control its business. The right of any legislative chamber under the Westminster system to control its business has existed for so long that it must be regarded as an essential part of its procedure which inheres in the very notion of a legislative chamber under that system.<sup>1</sup>

This privilege of the House to control its own agenda is symbolically expressed through the reading of a 'pro forma' bill at the opening of each session of Parliament, as outlined in the previous chapter. However, it is in the exertion by the House itself of its right to determine the timing and duration of sitting days, and to determine the conduct of business on each sitting day that demonstrates the significance of this privilege.

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1 (1998) 195 CLR 424 at 478.

## SITTINGS

### Definition of a sitting day

A sitting of the House is the period from the meeting of the House, after an adjournment, until it adjourns to a future date and time.

A sitting commences when the President takes the Chair. While the time for the meeting of the House on a particular day is fixed by sessional order, the time for the adjournment is not fixed and sittings are of variable length. A sitting may continue beyond midnight into the next calendar day or beyond before adjourning. However, the simple fact of the continuation of the sitting beyond midnight does not constitute an additional sitting day.<sup>2</sup> A sitting day is therefore a day on which the House meets to begin a sitting, rather than a day on which the House is sitting, and continues until such time as the House adjourns, whether that is on the same day or a subsequent day.<sup>3</sup>

There have been occasions when the House has adjourned and commenced a new sitting at a later hour of the same day. For example on 16 October 1997 the House adjourned at 4.15 pm and commenced a new sitting at 5.30 pm, to allow a member to give a notice of motion in relation to the tabling of documents by a private member which were to be made available only to members of the House and to the Special Commission of Inquiry into claims made in debate by the Hon Franca Arena on 17 September 1997.<sup>4</sup>

According to *House of Representatives Practice* where two sittings occur on one day this would be regarded a single sitting day for the purposes of statutory requirements, such as for the tabling or disallowance of delegated legislation.<sup>5</sup>

The definition of a sitting day is important for a number of reasons. As explained in Chapters 14 (Delegated Legislation) and 17 (Documents), there are statutory requirements for the tabling of delegated legislation within a number of sitting days of being made and for the tabling of annual and other reports within a number of days of receipt. There are also statutory requirements for notice of a motion for the disallowance of delegated legislation to be given within a certain number of sitting days of its tabling. Also, with certain exceptions, members may not move a motion without having given notice at a previous sitting of the House (SO 73). The time at which the House meets and adjourns is recorded in the Minutes of Proceedings.

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2 Although a new sitting day may commence subsequently on the second calendar day.

3 For example in 1978, when the House was considering a bill to reform the Council and a free conference of managers was convened to meet with managers from the Assembly, a single sitting went over several days when the House met on 31 January and did not adjourn until 7 February.

4 *LC Minutes* (16/10/1997) 117.

5 *House of Representatives Practice*, 5th edn, p 237.

### **Sitting days and times appointed by sessional order**

Standing order 35 provides that the days and times of meeting of the House in each sitting week will be determined by the House from time to time. At the commencement of each session, the House adopts a sessional order setting out the days and times of meeting. In recent years, the House has determined meeting times as 11.00 am on Mondays, Wednesdays, Thursdays and Fridays, and at 2.30 pm on Tuesdays.<sup>6</sup>

It is common for the House to sit on Tuesdays, Wednesdays and Thursdays during sitting periods. It is less common for the House to sit on Mondays and Fridays.

### ***Length and frequency of sittings***

The sessional orders do not prescribe the length of sitting days. During the period since 1988<sup>7</sup> the Council has sat for an average of 51 days over 16 weeks per year, with the average sitting day being in excess of 9 hours 30 minutes. This compares with an average of 44 sitting days between 1956-1988, when the average sitting day went for 4 hours 40 minutes.

From time to time, there have been announcements of proposals to introduce 'family friendly' or 'daylight' sitting hours.<sup>8</sup> Unlike some other Houses of Parliament in Australia, there has not yet been any restriction on night sittings or any formal restriction on the length of sitting days introduced in the Council.

### **Procedure upon the commencement of a sitting**

#### ***President takes the Chair***

Before the commencement of each sitting the chamber is prepared by the chamber support staff under the direction of the Usher of the Black Rod. Fifteen minutes before the time fixed for the meeting of the House, the bells are rung for one minute. Two minutes before the time fixed for the meeting of the House, the bells are again rung to call the members to the House. At the time fixed for the meeting of the House the bells cease ringing, the Usher of the Black Rod announces the President to the House and conducts the President to the Chair.

#### ***Quorum upon commencement of a sitting***

Section 22H of the *Constitution Act 1902* provides that a quorum of the House is eight members in addition to the President or other member presiding. This is approximately 20 per cent of the membership of the House, which is comparable

<sup>6</sup> *LC Minutes* (23/5/2006) 21, (10/5/2007) 52.

<sup>7</sup> No government has had a majority in the Council since 1988.

<sup>8</sup> See, for example, 'Parliament to douse the midnight oil', *Daily Telegraph*, 16 September 1994, and 'Parliament to abolish late-night sessions', *Sydney Morning Herald*, 12 October 2007.

to the percentage of members required to form a quorum in most other Houses of Parliament in Australia and elsewhere.<sup>9</sup>

At the advent of responsible government in 1856, the quorum of the House was one-third of members, exclusive of the President.<sup>10</sup> In 1890, in response to difficulties in maintaining a quorum in the appointed Council, this was changed to one-quarter of members, exclusive of the President.<sup>11</sup> This continued to be the quorum following the enactment of the *Constitution Act 1902*<sup>12</sup> up until 1978, when section 22H was inserted into the Constitution following the reconstitution of the Council as a directly elected House. Section 22H originally set the quorum at 12 members in addition to the President or other member presiding.<sup>13</sup> It was only in 1991 that section 22H was amended to reduce the quorum to the current eight members in addition to the President or other member presiding.<sup>14</sup>

A quorum is required upon commencement of a sitting. Under standing order 29, if at the expiration of five minutes after the time fixed for the meeting of the House a quorum is not present, the President is required to declare the House adjourned until the next sitting day.<sup>15</sup> There are many precedents from 1856 until 1900 where a quorum was not present at the commencement of a sitting and the House was adjourned to the next sitting day. The last occasion this occurred was on 5 December 1900.<sup>16</sup> There is also a precedent where, in the absence of sitting days having been fixed by sessional order, the President declared the House adjourned until a later hour.<sup>17</sup>

Provided that a quorum is present, the House is recorded in the Minutes of Proceedings as meeting at the time provided for in the adjournment or the sessional order.

### ***Absence of the President or other office holders***

Section 22G(5) of the *Constitution Act 1902* provides that the President shall preside at all meetings of the Council except as may be provided in the standing orders. Section 22G(7) in turn provides that, where the President is absent from

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9 Ashton W, 'The Quorum of the House', paper presented to the Fifth Conference of Presiding Officers and Clerks, Perth, May 1972.

10 *Constitution Act 1855*, 18 & 19 Vic (Imp), c 54, Sch 1, s 8.

11 *Constitution Act Amendment (Legislative Council Quorum) 1890*, 54 Vic No 1, s 1.

12 See the former s 22(1), since substituted.

13 See the *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*, Sch 1(9).

14 See the *Constitution (Legislative Council) Further Amendment Act 1991*, Sch 1(2).

15 On 18 October 2007, the House adopted a sessional order varying standing orders 29 and 30 to allow the President, in the absence of a quorum, to adjourn the House until 'a later hour of the day' as well as the next sitting day. See *LC Minutes* (18/10/2007) 281-282.

16 *LC Minutes* (19/7/1900) 45, (5/12/1900) 273. In the 1870-1871 session there were 11 instances.

17 *LC Minutes* (17/1/1883) 11.

the State, the Chair of Committees as Deputy President acts in the President's place. Standing order 20 also provides that the Deputy President will perform the duties and exercise the authority of the President in relation to all proceedings of the House.

If both the President and Deputy President are absent, the Assistant President presides. In the absence of all three, a Temporary Chair of Committees presides.<sup>18</sup> If none is available, the members present, provided they form a quorum, may elect a member to act as President for that day only (SO 21(2)). The motion for the election of a temporary President is put to the House by the Clerk. Otherwise the House stands adjourned until the next sitting day.

When the President is absent from the State, the Deputy President is referred to as the Acting President and, under section 22G(7), is vested with all the power, authority, duties and functions of the President. The Assistant President or a Temporary Chair presiding during the absence of both the President from the State and the absence of the Deputy President is also referred to as the Acting President.<sup>19</sup>

If the President arrives during the sitting of the House and takes the Chair, it is recorded in the Minutes of Proceedings.<sup>20</sup>

Section 22G was inserted into the *Constitution Act 1902* in 1978. On some occasions before 1978, where the President was expected to be absent for an extended period, the House formally appointed the Chair of Committees as Acting President.<sup>21</sup> On other occasions, where the President was absent for a single sitting or for a few days, the Chair of Committees, as Deputy President, took the Chair.<sup>22</sup> Since 1978, where the President has been absent and the Chair of Committees has been present, the Chair of Committees has simply taken the Chair, in accordance with the provisions of both section 22G and standing order 20.<sup>23</sup>

### *Prayers*

Upon the President taking the Chair each day, both the Parliamentary Prayer and the Lord's Prayer are read.

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18 *LC Minutes* (28/9/1949) 181, (18/9/1968) 85, (6/3/1992) 45, (9/11/1993) 355, (10/11/1993) 367, (11/11/1993) 377.

19 *LC Minutes* (11/11/1993) 377-378.

20 On 25 September 2001 the President was absent at the commencement of the sitting, and although she attended proceedings in committee of the whole, did not attend and take the Chair in the House at any time that day.

21 *LC Minutes* (13/7/1938) 15, (27/7/1938) 23, (22/5/1956) 5.

22 See, for example, *LC Minutes* (3/6/1931) 157, (23/8/1966) 51.

23 On 17 March 1981 the Chair of Committees made a statement to the House to this effect, referring to s 22G of the *Constitution Act 1902*, *LC Minutes* (17/3/1981) 345. For more recent examples of the Chair of Committees taking the Chair in the absence of the President, see *LC Minutes* (11/12/2001) 1, (12/12/2001) 1, (13/12/2001) 1.

The Parliamentary Prayer was inserted into the standing orders in 1934.<sup>24</sup> The Lord's Prayer was originally adopted by way of sessional order in 1988.<sup>25</sup> The standing orders adopted in 2004 include both prayers (SO 28).

Under standing orders in force before 2004, prayers were read by the President on taking the Chair. However, there were a number of precedents where, in the case of a vacancy in the office of President, the prayer was offered by the Clerk<sup>26</sup> or commissioners.<sup>27</sup> Under the revised standing orders adopted in 2004, the President may nominate another member, or request the Clerk, to read the prayers (SO 28(2)). During her presidency, President Burgmann commonly requested the Clerk to read the prayers.

In October 2001, the House debated a motion to amend the sessional order in relation to prayers to require the President, instead of offering prayers, to ask all members 'to stand in silence and pray or reflect on your responsibilities to the people of New South Wales'. The question was resolved in the negative on division by 31 votes to 5.<sup>28</sup> The debate on the motion explored the history of parliamentary prayers and arguments for and against their use.<sup>29</sup> A similar motion was again debated on 16 September 2003, and negatived 30 votes to 7.<sup>30</sup>

## Requirements for the continuation of a sitting

### *Quorum*

As noted above, section 22H of the *Constitution Act 1902* provides that the quorum for the House is eight members in addition to the President or other member presiding. The rationale for the provision of a quorum for the Council was stated by President Hay in 1881:

Important measures ought not to be dealt with in the House without a reasonable attendance of members, and when a member believes that there is not a sufficient number present he has the right to call attention to the state of the House.<sup>31</sup>

Technically, the House is required to maintain a quorum at all times. In reality, a quorum need only be present at the commencement of a sitting (SO 29), in division (SO 30(1)) and be formed when a member draws attention to the absence of a quorum. If the numbers in the House fall below the requirements of section

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24 *LC Minutes* (31/5/1934) 26.

25 *LC Minutes* (28/4/1988) 26.

26 *LC Minutes* (30/4/1946) 167, (23/4/1964) 451-452.

27 *LC Minutes* (18/8/1952) 1, (9/8/1966) 1.

28 *LC Minutes* (17/10/2001) 1209, 1211-1212.

29 *LC Debates* (17/10/2001).

30 *LC Minutes* (16/9/2003) 289-291.

31 Ruling: Hay, *LC Debates* (20/10/1881) 1674.

22H, but no notice is taken, then the House may continue to sit.<sup>32</sup> However, it is unusual for there to be an absence of a quorum in the Council, except immediately before the House adjourns. The absence of a quorum does not affect the validity of a motion passed by the House. Other than ensuring that a quorum is present before taking the Chair, it is not the responsibility of the President to call attention to the absence of a quorum. It is the responsibility of the House as a whole to ensure the presence of a quorum.<sup>33</sup>

When notice is taken of the absence of a quorum, standing order 30(3) requires the division bells to be rung until a quorum is formed but for no longer than five minutes, after which the House is counted. The doors remain open after the bells have ceased to ring as members are being counted, and a member who enters the chamber prior to the President declaring the result of the count may be counted. However, a member who enters after the President announces that a quorum has not been formed may not be counted.<sup>34</sup> Standing order 30(4) provides that members may not leave the House after attention has been called to the absence of a quorum.<sup>35</sup> If when the House is counted a quorum is not present, the President declares the House adjourned to the next sitting day.<sup>36</sup> The names of the members present when the House is counted are recorded in the minutes (SO 30(6)). There are many examples since 1856 where the House was counted out following a quorum call after the commencement of business. The last occasion this occurred was in 1916 following a quorum call during the adjournment debate, when the House was counted out and adjourned by the President.<sup>37</sup>

In the federal House of Representatives, members seeking to leave the chamber before the House is counted have been ordered to resume their seats and the Chair has directed the Sergeant-at-Arms to bring back members leaving the chamber.<sup>38</sup>

There are precedents where the House has been counted and a quorum found to be present without the need for the bells to be rung.<sup>39</sup> There are also a number of precedents where the bells have been rung and a quorum formed.<sup>40</sup>

32 Ruling: Hay, *Sydney Morning Herald*, 28 April 1876, p 2.

33 Evans H (ed), *Odgers' Australian Senate Practice*, 11th edn, Department of the Senate, Canberra, 2004, p 156.

34 *Ibid*, p 155.

35 There is also a Deputy President's ruling to the effect that members in the President's gallery are within the chamber and may not leave the chamber when the quorum bells are ringing. See ruling: Gay (Deputy), *LC Debates* (23/4/1996) 327. See also Harris IC (ed), *House of Representatives Practice*, 5th edn, Department of the House of Representatives, Canberra, 2005, p 269.

36 On 18 October 2007, the House adopted a sessional order varying standing orders 29 and 30 to allow the President, in the absence of a quorum, to adjourn the House until 'a later hour of the day' as well as the next sitting day. See *LC Minutes* (18/10/2007) 281-282.

37 *LC Minutes* (15/9/1916) 81.

38 *House of Representatives Practice*, 5th edn, p 269.

39 *LC Minutes* (6/11/1979) 186, (11/4/1989) 532. This is in accordance with practice in other Houses.

40 See, for example, *LC Minutes* (23/9/2004) 1031, (27/10/2004) 1082, (9/6/2005) 1464, (12/10/2005) 1626, (9/11/2005) 1697, (2/5/2006) 1973, (15/11/2006) 355.

Where a quorum is present or formed the House continues with the item of business before it at the stage it was interrupted. The Senate has a standing order which provides that the time taken to form a quorum does not come out of a senator's speaking time or the time for a debate.<sup>41</sup>

In the House of Representatives it is considered 'highly disorderly' for a member to call attention to the absence of a quorum when a quorum is in fact present. Members calling attention to the absence of a quorum in such circumstances have been named and suspended from the service of the House.<sup>42</sup>

Standing order 30(1) also provides that, if on a division in the House, it appears from the lists handed in by the tellers that there is no quorum present, the President is to adjourn the House at once. There is no provision for the bells to be rung again in this circumstance. The names of the members present are to be recorded. This has occurred on a division on the question that a bill be now read a second time<sup>43</sup> and on a division on the question that a bill be now read a third time.<sup>44</sup> In each case the question lapsed, although the order for the question was later restored by motion on notice and dealt with on a subsequent day.<sup>45</sup>

The quorum in committee of the whole is also eight members in addition to the Chair of Committees or other member presiding. If notice is taken of the absence of a quorum in committee, the division bell is rung for five minutes.<sup>46</sup> If, within five minutes, a quorum is not formed, or it appears on a division that a quorum is not present, the Chair of Committees is to leave the Chair without a question being put and report to the House (SO 176). The President then counts the House and, if a quorum of members is then present, the House again resolves itself into a committee of the whole without any question being put.<sup>47</sup>

There are many examples since 1856 where the House was counted out and adjourned by the President, after the Chair of Committees reported a quorum was not present in committee of the whole House. The last occasion this occurred was in 1916.<sup>48</sup>

Under the standing orders in force before 2004, if the House was counted and a quorum was not formed in the House within five minutes, the House adjourned and the question lapsed. The revised standing orders adopted in 2004 provide that, where proceedings in committee are interrupted by the lack of a quorum and

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41 *Odgers*, 11th edn, p 156.

42 *House of Representatives Practice*, 5th edn, p 268.

43 *LC Minutes* ((4/11/1896) 204, (27/11/1900) 236, (5/12/1900) 271, (11/12/1902) 196 (motion to adjourn second reading debate).

44 *LC Minutes* (12/9/1900) 125.

45 In the House of Representatives business interrupted by a quorum count has been resumed by motion moved pursuant to a contingent notice, motion moved by leave or motion on notice; see *House of Representatives Practice*, 5th edn, p 270.

46 *LC Minutes* (4/10/1967) p 282.

47 *LC Minutes* (5/8/1909) 38, (4/11/1915) 142, (23/8/1967) 282.

48 *LC Minutes* (23/3/1916) 279 (no quorum in division on a bill).



consequent adjournment of the House, the resumption of the committee will be an order of the day for the next sitting day, and when the order is called on the proceedings will be resumed at the point where they were interrupted (SO 176(4)).

The House of Commons in Westminster cannot now be counted at any time, and the absence of a quorum does not now entail the adjournment of a sitting.<sup>49</sup> However, as the quorum of the Council is stipulated in the *Constitution Act 1902*, this course is not open to the Council.

### *Presence of a minister in the House*

There is a convention in the Council that a minister or parliamentary secretary should be present in the chamber at all times. This accords with the view that a government representative should be in charge of items of government business, but also that there should be someone there to take note of or respond to matters raised during private members' business. According to *House of Representatives Practice* it is desirable from the government's point of view, and expected by the members, that there should be a member present able to react with authority on behalf of the government to any unexpected development.<sup>50</sup>

Since 2004, the standing orders have provided that the House will not meet unless a minister is present in the House (SO 34).

The practice of requiring a minister, or representative of the government, to be present during sittings of the Council is long standing. In 1931 President Farrer left the Chair immediately after the House met and before proceeding to the conduct of any other business, on account of the absence of a representative of the government. When a minister arrived, he made his apologies to the House before business resumed.<sup>51</sup>

More recently, in 1981,<sup>52</sup> 1982<sup>53</sup> and 1983,<sup>54</sup> President Johnson left the Chair owing to the absence of a minister, in the first instance immediately after reading the prayers, and in the second two instances during debate on a bill. On each occasion the House did not resume until a minister had arrived. When a point of order was taken in December 1995 that a minister was not present, a minister immediately returned and business continued. That occasion was noted in the Minutes of Proceedings but no ruling was given.<sup>55</sup> Again, in October 1998, President Chadwick left the Chair until a minister was present in the House.<sup>56</sup>

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49 McKay W (ed), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 23rd edn, LexisNexis, UK, 2004, p 306.

50 *House of Representatives Practice*, 5th edn, p 260.

51 *LC Minutes* (30/4/1931) 131.

52 *LC Minutes* (14/4/1981) 457.

53 *LC Minutes* (7/4/1982) 439.

54 *LC Minutes* (20/9/1983) 134.

55 *LC Minutes* (15/12/1995) 474.

56 *LC Minutes* (13/10/1998) 751.

In June 2001 Deputy President Kelly left the Chair until the ringing of a long bell when no ministers were present in the House following a union picket of the Parliament in protest at proposed changes to workers' compensation legislation. On that occasion the House met at 2.30 pm according to adjournment. Immediately following the reading of the prayers, a member drew the attention of the House to the absence of a minister, at which point the Deputy President left the Chair, refusing to hear any points of order from the opposition or undertake any other business. The House resumed at 5.18 pm, following the arrival of the ministers.<sup>57</sup> A notice of motion was subsequently given by the Leader of the Opposition for the removal of the Deputy President for his actions in leaving the Chair. The motion was moved the next day, but following considerable debate, including the moving and subsequent withdrawal of an amendment for censure rather than removal from office, the motion was defeated by 14 votes to 23.<sup>58</sup>

The most recent incident occurred in June 2005, when President Burgmann left the Chair in the absence of a minister in the chamber.<sup>59</sup>

There are two precedents to the contrary recorded in 1916. On the first occasion, on 31 March 1916, Deputy President O'Connor was presiding in the absence of the President. No notice was taken of the absence of a minister, and a private member concluded proceedings on a bill and moved the adjournment of the House. The second occasion occurred on 9 August the same year. On that occasion, objection was taken when, in the absence of the Leader of the House, a private member sought to move a government motion. President Flowers commented that he could see no difference between the minister having the right to permit another member to move the motion on his behalf and any other member having the same right.<sup>60</sup> The point was raised again later the same day, with a long serving member (the Hon James Wilson) claiming that in his 17 years in the House he knew of no precedent or procedure giving the representative of the government the right to place a private member in charge of the House to deal with business. President Flowers explained to the House that he had been forewarned that the Leader of the House would be unable to attend the day's sitting and that he had intended to adjourn the House himself immediately on taking the Chair. However, he had been informed that a precedent where another member acted on behalf of the minister had already been established (referring to the instance in March of that year) and was therefore already on the records. As such the President felt he had to abide by the precedent. He concluded his explanation by stating that the matter was entirely in the hands of the members themselves. However, no further action appears to have been taken at that time.<sup>61</sup>

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57 *LC Minutes* (19/6/2001) 1028.

58 *LC Minutes* (20/6/2001) 1033, 1036-1037.

59 *LC Minutes* (21/6/2005) 1476.

60 *LC Debates* (9/8/1916) 634.

61 *LC Debates* (9/8/1916) 635.

In practice, governments maintain a roster of ministers in order to meet the requirement under standing order 34 that there be a minister or parliamentary secretary in the Council at all times.

## **Unusual sittings**

### *Joint sittings*

Joint sittings of both Houses are usually held to elect members to fill vacancies in the Council under section 22D of the *Constitution Act 1902* and vacancies in the representation of the State of New South Wales in the Senate under section 15 of the Commonwealth Constitution.

For joint sittings to fill casual vacancies in the Council, the message received from the Governor convening the joint sitting specifies the place and time of the meeting, which, by convention, takes place in the Council chamber.

For casual vacancies in the Senate, the message from the Governor does not specify the time and date of sitting. The message is set down for consideration on receipt of a message from the Assembly. The message received from the Assembly requests the Council to name the place and hour for a joint sitting. The Council considers the message from the Assembly and sends a message to the Assembly specifying the time and place for the joint sitting.<sup>62</sup>

In practice, the Clerk of the House negotiates the time and date for both types of joint sittings with the Leader of the House, the Clerk of the Assembly and the Cabinet Office.

Joint sittings may also be convened for the purposes of resolution of disagreement between the Houses over bills under section 5B of the *Constitution Act 1902*. This is discussed in more detail in Chapter 21 (Relations between the Houses).

### *Joint meetings*

On occasion members of the Council and Assembly have assembled for joint meetings for the purposes of hearing addresses from visiting dignitaries and to consider joint motions. Meetings of this kind are not provided for in the standing orders, although there is nothing to prevent such a meeting occurring if both Houses agree.

On 19 October 1989, a meeting of both Houses was held in the Council chamber to hear an address by His Excellency the Hon Shunichi Suzuki, Governor of the Metropolis of Tokyo. On that occasion, the Usher of the Black Rod was directed by the President to lead the Assembly members into the chamber. On returning to the chamber, the Usher of the Black Rod announced the presence beyond the Bar

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62 See, for example, *LC Minutes* (13/10/1998) 748-749, (3/5/2000) 414-415, (3/5/2005) 1343-1344.

of the House of His Excellency the Hon Shunichi Suzuki and the Hon Nick Greiner, Premier of New South Wales, who were then invited to enter through the Bar onto the floor of the House in order to address the joint meeting. At the conclusion of the Governor's speech, His Excellency and the Premier were conducted from the chamber by the Usher of the Black Rod, and the members of the Assembly withdrew.<sup>63</sup>

On 8 September 1998, the Council accepted the invitation from the Assembly for members and officers of the Council to attend the Assembly chamber to hear an address by Her Excellency Mary McAleese, President of Ireland.<sup>64</sup> On 7 June 2000, the Council accepted the invitation from the Assembly to attend the Assembly chamber to hear an address by Mr Rhodri Morgan, AM MP, First Secretary of The National Assembly for Wales.<sup>65</sup>

On 22 October 2002, the Council received a message from the Assembly informing the House that it had agreed to a resolution that a joint sitting be convened in the Assembly chamber for the purpose of considering a motion of sympathy to the families and friends of victims of the bombings in Bali on 12 October 2002 and requesting the Council to agree to a similar resolution. The resolution further provided that during the joint sitting the standing orders of the Assembly would apply. The Council agreed to the resolution and at the time appointed for the joint sitting the President left the Chair and members proceeded to the Assembly chamber. On the House resuming, the President tabled the Minutes of Proceedings of the joint sitting.<sup>66</sup>

On 18 September 2002, a joint meeting was also convened in the Assembly's chamber for the purpose of a seminar on reform of the law of negligence. The resolutions of the Houses agreeing to the meeting further allowed certain persons expert in the field to be admitted to the floor of the House to address members. During the joint sitting the standing orders of the Assembly applied.<sup>67</sup>

### *Secret sittings and meetings*

A number of authorities on parliamentary practice refer to the conduct of secret sittings or secret meetings, including joint meetings.<sup>68</sup> These secret sittings and meetings have taken place on a very small number of occasions, during wartime.<sup>69</sup>

63 *LC Minutes* (19/10/1989) 988.

64 *LC Minutes* (8/9/1998) 674-675.

65 *LC Minutes* (6/6/2000) 495, (7/6/2000) 500.

66 *LC Minutes* (22/10/2002) 404-405.

67 *LC Minutes* (17/9/2002) 353-354.

68 *Erskine May*, 23rd edn, pp 211-212; *House of Representatives Practice*, 5th edn, p 240; *House of Commons Procedure and Practice* (Canada), 2000, p 350.

69 For example, in the Australian House of Representatives notice was taken of the presence of strangers who were then ordered to withdraw from the gallery on 13 December 1940. This also happened on two occasions in 1941. On each occasion senators were allowed to remain in the gallery. Joint secret meetings with the Senate were subsequently held on four occasions in 1942; see *House of Representatives Practice*, 5th edn, pp 240-241.

There is no precedent for secret meetings of the Council, and the current standing orders do not provide for secret or private meetings of the House, although there is nothing to prevent the House resolving to hold a meeting in private. However, as discussed in Chapter 19 (Committees), committees may hold private meetings, and persons other than members of the House and officers of a committee are excluded when a committee is deliberating (SO 218(2)).

### *Summits*

In May 1999 the Council and Assembly agreed to hold a drug summit.<sup>70</sup> The summit involved members of both Houses participating in joint proceedings together with invited community representatives. Plenary sessions of the summit were held in the Council chamber and working groups met in various meeting rooms throughout Parliament House. The summit was chaired jointly by a former Speaker of the House of Representatives and a former Premier of Victoria. The summit agreed to 'summit rules' which ensured that quasi-parliamentary procedures were followed in plenary sessions. However, the summit was not a parliamentary proceeding.

Since May 1999, there have been three further summits, concerning salinity, child obesity and alcohol. These have not been preceded by agreements of the two Houses and, although some members of Parliament have participated in the summits, they have clearly been executive activities.

### **Suspending a sitting**

Apart from very brief sittings, it is commonplace for there to be at least one 'suspension' or 'pause' during a sitting day. A sitting is suspended by the President leaving the Chair. In one instance a sitting was suspended by the Clerk when presiding over the election of a new President.<sup>71</sup>

Until the adoption of the current standing orders in 2004, there was no standing or sessional order dealing with the suspension of a sitting. In 1978, during debate on the first reading of the Constitution (Police Regulation) Amendment Bill and cognate bill, the Leader of the Government, the Hon Paul Landa, suggested that the President leave the Chair to allow members to consider whether there would be any impediment to passage of the bills during the present sitting. The President inquired if it was the wish of members that he leave the Chair. The Leader of the

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<sup>70</sup> *LC Minutes* (12/5/1999) 38-39.

<sup>71</sup> This occurred on 29 June 1998 following the resignation of President Willis the previous day. In conformity with the standing orders, the Clerk presided over the election of a new President. However, a rail disruption that day had unavoidably detained a member, and at the suggestion of the Leader of the Government the Clerk left the Chair at 11.05 am until 2.30 pm, to allow the member to participate in the election of the President, *LC Minutes* (29/6/1998) 611.

Opposition, the Hon Max Willis, in objecting, assured the minister that members of the opposition did not require time to consider the bills.<sup>72</sup>

However, the 2004 standing orders now provide that the President may leave the Chair at any time to suit the convenience of members without any question being put (SO 23). In cases of serious disorder in the House or in committee, the President may suspend the sitting or adjourn the House until the next sitting day without any motion (SO 193).

In most cases the President suspends the sitting following the suggestion of the Leader of the House, such as in the case of meal breaks, and before leaving the Chair the President announces to the House the time at which the sitting will resume. In other cases the President simply leaves the Chair, announcing that the House will resume either at a certain time or on the ringing of a long bell. In addition to meal breaks, sittings have been suspended for a variety of reasons, including:

- enabling members to attend a joint sitting or meeting;<sup>73</sup>
- enabling members to attend upon the Governor;<sup>74</sup>
- enabling members to attend an official function;<sup>75</sup>
- the absence of a minister;
- disorder in the galleries;<sup>76</sup>
- grave disorder in the House;<sup>77</sup>
- the raising of a point of order as to the validity of a procedure;<sup>78</sup>
- to enable the President to consider a point of order raised as to whether or not a bill before the House was in order;<sup>79</sup>
- to allow the House to await a message from the Assembly forwarding a bill for concurrence;<sup>80</sup>
- to permit ‘negotiations and discussions’ concerning legislation being considered in committee of the whole;<sup>81</sup>

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72 *LC Minutes* (5/9/1978) 83, *LC Debates* (5/9/1978) 903-904. A subsequent motion to suspend standing orders as a matter of necessity was also objected to and second reading of the bills was set down for the next sitting day.

73 *LC Minutes* (22/10/2002) 405.

74 *LC Minutes* (6/6/2002).

75 *LC Minutes* (5/5/1992) 143.

76 *LC Minutes* (27/5/1997) 750.

77 *LC Minutes* (2/5/1996) 118. On this occasion, the grave disorder in the House arose following the suspension of Leader of the Government in the Council, the Hon Michael Egan. Other precedents for the suspension of sittings in the event of grave disorder are to be found in other authorities; see *Erskine May*, 23rd edn, pp 305, 306, 450; see also *House of Representatives Practice*, 5th edn, p 241.

78 *LC Minutes* (13/10/1988) 154, *LC Debates* (13/10/1988) 2243.

79 *LC Minutes* (21/1/1926) 160.

80 *LC Minutes* (14/12/1993) 457, *LC Debates* (14/12/1993) 6030.

81 *LC Minutes* (15/12/1993) 462-463, *LC Debates* (15/12/1993) 6171, 6176.

- due to technical problems, such as a power failure<sup>82</sup> or failure of the division bells.<sup>83</sup>

This list should not be regarded as exhaustive, the suspension of sittings being a matter of the convenience of the House in conducting its business.<sup>84</sup>

The House has also used suspension of a sitting to enable the House to proceed at a later time to a special adjournment and valedictory speeches by retiring members, but without the need to commence a new sitting, and without the necessity for other routine items of business, such as Question Time, to be proceeded with. This practice was adopted by the House on 6 December 2002, when the House was suspended at 3.17 am until 10.00 am on 10 December 2002.

*Odgers* comments that whilst this device can be used to enable government business, including urgent legislation, to proceed without interruption, 'if used excessively by a determined majority, the procedure could be severely restrictive of the rights of individual senators'.<sup>85</sup>

### Special adjournments and early recall of the House

Although the sessional order appoints particular times of meeting, this does not prevent the House, when adjourning, from appointing an earlier or later time for its next meeting. For example, on 24 September 1985, 23 September 1986 and 19 September 1989 the Council met at 8.00 pm to table the budget papers and commence a take note debate on the budget estimates, following the presentation of the budget in the Assembly earlier in the day.<sup>86</sup>

Where the House is adjourned until a date other than the next sitting day, a special adjournment is moved fixing the date and hour of the next sitting. A special adjournment is moved on a sitting Thursday to fix the date and hour of the next sitting, normally on the Tuesday of the following week or a Tuesday of a subsequent week. Without such a special adjournment the House would be required to meet the following day, Friday, at the time appointed under the sessional order.

### *Early recall by the President*

At the end of each sitting period, that is, before the winter or summer adjournment, a special adjournment is moved to fix the date and time of the next sitting. Since the 1930s, the motion for the special adjournment at the end of a sitting period has included a provision for the President, or if the President is unable to

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82 *LC Minutes* (16/4/1997) 610.

83 *LC Minutes* (12/11/2002) 464.

84 *House of Commons Procedure and Practice* (Canada), 2000, p 343 outlines a range of circumstances in which sittings have been suspended in order to facilitate the business of the House.

85 *Odgers*, 11th edn, p 153.

86 *LC Minutes* (24/8/1985) 613, (23/9/1986) 283, (19/9/1989) 887.

act on account of illness or other cause, the Chair of Committees, to be able, by communication addressed to each member of the House, to fix an alternative date and/or hour of meeting. The House has been recalled on an earlier date, in accordance with this procedure, on a number of occasions since 1935, on each occasion at the request of the Leader of the Government. Early recalls have occurred for a number of reasons, including:

- the death of the Monarch;<sup>87</sup>
- the entry of Japan into World War II;<sup>88</sup>
- to deal with urgent financial legislation;<sup>89</sup>
- the return of writs for the filling of vacancies in the House;<sup>90</sup>
- to enable both Houses of Parliament to deal with urgent legislation;<sup>91</sup>
- to hold a joint sitting to fill a Senate vacancy;<sup>92</sup>
- the Assembly's disagreement with the Council's amendments to a piece of controversial legislation;<sup>93</sup>
- the tabling of a report of the Independent Commission Against Corruption and the resignation of the Premier;<sup>94</sup>
- a request from the Premier in consequence of an undertaking that certain legislation would be introduced within a particular timeframe;<sup>95</sup>
- to hold a joint sitting to fill a vacancy in the Council;<sup>96</sup>
- to deal with legislation introduced by the government in response to social disturbances.<sup>97</sup>

The provision for the President to fix an alternative day and hour of meeting has also been used to fix a later day and hour of meeting than that included in the adjournment motion.<sup>98</sup>

*Odgers* notes that:

[T]he President may exercise an independent discretion to change the time of meeting for any reason related to the orderly conduct of Senate proceedings ...

In exercising the power to alter the time of meeting the President also by convention acts upon the advice of the executive government; a statement

87 *LC Minutes* (11/12/1935) 65, (18/4/1936) 67, 71, (12/12/1951) 224-225.

88 *LC Minutes* (19/11/1941) 137, (13/1/1942) 139.

89 *LC Minutes* (7/10/1976) 102, (20/10/1976) 105.

90 *LC Minutes* (13/10/1977) 567, (25/10/1977) 571.

91 *LC Minutes* (24/5/1984) 230, (12/6/1984) 239.

92 *LC Minutes* (4/12/1986) 636, (11/2/1987) 643.

93 *LC Minutes* (6/3/1992) 52, (11/3/1992) 53, 60.

94 *LC Minutes* (8/5/1992) 192, (30/6/1992) 193, 195-197, 203-205, 208.

95 *LC Minutes* (20/11/1993) 436, (14/12/1993) 449, 457.

96 *LC Minutes* (4/7/2001) 1120-1121, (6/9/2001) 1125-1126.

97 *LC Minutes* (15/12/2005) 1818-1819.

98 *LC Minutes* (1/9/1988) 83, (20/9/1988) 87, (1/7/1992) 217, (15/9/1992) 221.



of this convention was made by President Givens in 1916 (SD, 29/9/1916, p 9115). The convention operates only for the consideration of government business and not for the political convenience of the government, for example, in deciding upon an early general election. In other words, it is not a substitute for the power of prorogation.<sup>99</sup>

There are a number of examples of occasions on which the Commonwealth Parliament has met at an hour other than that specified in the special adjournment of the preceding sitting day or sessional order.<sup>100</sup>

*Early recall at the request of a majority of members*

In 1990, the motion for the special adjournment at the end of a sitting period was amended to provide a procedure for an absolute majority of members of the House to request that the House meet at an earlier time. On receipt of the request, the President, or in the absence of the President the Chair of Committees (or in the absence of the Chair of Committees any temporary chair of committees), by communication addressed to each member of the House, fixes a day and hour of meeting in accordance with the request.<sup>101</sup> In proposing the amendment the then Leader of the Opposition, the Hon Michael Egan said:

As can be seen from the terms of the amendment, the purpose is to provide the House with the option of reconvening during the recess if a majority of members so request. During any recess there is always the possibility that important reports may be tabled or other significant issues may arise that warrant the House being reconvened so that those matters can be discussed while they are still topical. There is precedent in the Commonwealth Senate for a similar amendment enabling the reconvening of that House, and as Odgers states at page 179: 'It is surprising that the right of the upper House to meet and conduct its proceedings independently of the Executive Government was not established earlier in the Senate's history. It is certainly a development of major importance and opens up a new era for the Senate in maintaining a continuing surveillance of the Executive's administration and regulation-making powers.' I would point out to honourable members that the Government always has the power to have the House reconvened if it so wishes. I believe, and the Senate believes, that it is a right which should also be held by a majority of the House. For that reason I have moved the amendment. It needs to be emphasised that this House is the master of its own destiny, and that the

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99 *Odgers*, 11th edn, p 148. Examples referred to where the President has fixed another time of meeting include circumstances where Canberra Airport was closed due to fog and 20 Senators were unable to land, and where official functions have extended beyond the fixed meeting time for the Senate.

100 The reasons include: the presentation of an Address to the Prince of Wales; to enable members to attend a reception for a visiting dignitary; to enable members to view or listen to the running of the Melbourne Cup; the closure of Canberra Airport due to fog; and malfunctioning of the bells which are customarily rung before the scheduled time for the commencement of a sitting day. See *House of Representatives Practice*, 3rd edn, p 263.

101 *LC Minutes* (13/6/1990) 317-318.

Government is answerable to the Parliament and to the House. We are not the property of the Government; the Parliament is supreme.<sup>102</sup>

The House was recalled under this procedure on 26 June 1990 to consider a motion of confidence in the Minister for Police and Emergency Services. On the House meeting, a point of order was taken concerning the appropriateness of the President being included as one of the members represented by the request from the Leader of the Opposition, of which party the President was a member. The President ruled that there was no point of order.<sup>103</sup>

On 15 December 1995, the special adjournment at the end of the sitting period fixed the date for the next sitting of the House as 5 February 1996. Subsequently, however, on 11 January 1996, the Leader of the Government requested, in accordance with the special adjournment resolution, that the President communicate with each member and call the House to meet instead at a later date on 16 April 1996. The President subsequently received a further request from a majority of members that the House be recalled early. This request was made by the majority in response to considerable public debate in January 1996 in relation to issues pertaining to the Governor and Government House.

Despite the absence of the inclusion in the special adjournment on 15 December 1995 of the provision for a majority of members of the House to request that the House meet at an earlier time, on 25 January 1996 the President indicated that he was 'duty bound to respond to the wishes of the majority of members' and communicated to each member that he had fixed 13 February 1996 as the date for the House to next meet. As it turned out, however, the government thwarted this attempt to recall the House when on 27 January 1996 the Premier wrote to the President indicating that he had submitted a recommendation to the Governor-in-Council that the Council and Assembly be prorogued to 15 April 1996 and be called together to next meet on 16 April 1996. A proclamation to that effect was issued by the Governor and published in a Special Supplement to the Government Gazette on 27 January 1996.

The next occasion on which the motion for the special adjournment at the end of a sitting period was amended to include the procedure for recall by the President at the request of a majority of members of the House was 5 December 1996.<sup>104</sup> On this occasion the amendment referred to a request from 'a majority' of members, rather than 'an absolute majority'.

Between 1996 and 2003, the amendment to the motion for the special adjournment providing for a recall at the request of 'a majority' of members was moved at the end of each sitting period. Finally, in September 2003, a provision to allow the recall of the House at the request of a majority of members was included in the sessional orders. This provision was in turn adopted in the new standing orders in 2004 (SO 36).

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102 *LC Debates* (13/6/1990) 5542.

103 *LC Debates* (26/6/1990) 5557-5565.

104 *LC Minutes* (5/12/1996) 565-566.

*An unusual session in 1982*

On 26 May 1982, both Houses of the Parliament were prorogued by proclamation of the Governor to meet on Tuesday 17 August 1982 for an official opening of Parliament by the Governor.<sup>105</sup>

However, at the Premier's Conference in Canberra on Friday 25 June 1982, Premier Wran proposed the introduction of petrol and diesel fuel taxes as one of a series of measures to raise additional revenue to be implemented before the normal State budget.<sup>106</sup> In order that the Parliament might consider these proposed new taxes, on 28 June 1982 the Governor, on the advice of the Premier, issued a proclamation convening both Houses of Parliament to meet on 30 June 1982 at 11.00 am. The proclamation referred to 'weighty and urgent reasons' for the Houses to assemble for the dispatch of business sooner than already proclaimed.<sup>107</sup>

The new session of Parliament was opened by commissioners at 11.30 am, and after the transaction of formal business in the Council the President left the Chair at 12.01 pm, following the giving of notices of motions, until 4.30 pm. During notices, the Leader of the Government gave contingent notice for the suspension of standing orders to pass the Business Franchise Licences (Petroleum Products) Bill through all stages in one sitting, to give effect to the new fuel taxes proposed by the Premier, which was expected to be received from the Assembly later that sitting day. A notice was also given for government business to take precedence of general business on each sitting day until 2 July 1982.

The House subsequently resumed for Question Time after which the President again left the Chair at 6.21 pm until a later hour, eventually resuming the chair at 12.20 am on Thursday 1 July. The reason for this suspension of the sittings was to await passage through the Assembly of the Business Franchise Licences (Petroleum Products) Bill. When the bill was received in the Council, the first reading was debated and carried on division.

The Leader of the Government, the Hon Paul Landa, then sought to suspend standing orders as a matter of necessity, and without previous notice, to pass the bill through the Council during the present sitting of the House. However, objection was taken to the suspension of standing orders without the requisite 24 hours notice (under then SO 264) and the motion lapsed. The second reading of the bill was then set down as an order of the day for the next sitting day.

In response, the government used its majority in the House to adjourn the House until Thursday 1 July 1982 at 1.15 am, approximately 15 minutes later, to enable the passage of the bill through all stages at the next sitting. An amendment by the Leader of the Opposition, the Hon Max Willis, for the House to meet at 10.00 am was negatived on the voices. Accordingly, the House adjourned at 1.01 am and met for the new sitting shortly afterwards at 1.15 am.<sup>108</sup>

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105 *LC Minutes* (26/5/1982) 471.

106 *Sydney Morning Herald*, 28 June 1982, p 2.

107 *LC Minutes* (30/6/1982) 1.

108 *LC Minutes* (30/6/1982 & 1/7/1982am) 8, (1/7/1982) 21.

The motion for precedence of government business passed without any opposition and when the order of the day for the second reading of the Business Franchise Licences (Petroleum Products) Bill was read, Mr Willis took a point of order that it was not competent for the House to deal with the bill, as 'future day' in standing order 166 (now SO 137) meant the next calendar day. President Johnson did not uphold the point of order, indicating that there were many precedents over the years where the House had sat after midnight and proceeded with legislation on the same day, and that the sitting commencing at 1.15 am was a 'future day' for the purposes of standing order 166.<sup>109</sup> A subsequent dissent motion against the President's ruling was negatived on the voices.<sup>110</sup>

The bill passed the second reading debate on division and following consideration of the bill in committee of the whole and adoption of the report from the committee, the President left the chair again at 7.25 am until 12 noon. This was necessary to allow the expiration of 24 hours for the suspension of standing orders required by the then standing order 264, before the bill could proceed to the third reading.

When the House resumed at 12 noon, standing orders were suspended on contingent notice and the bill was then able to pass the third reading and was returned to the Assembly without amendment. The House then adjourned until Tuesday 24 August 1982 and the session was subsequently prorogued by proclamation of the Governor on 4 August 1982.

### Unusual adjournments

There are a number of precedents for unusual adjournments of the Council. The House has adjourned, as a mark of respect, in some cases without proceeding with any business, in the following circumstances:

- death of the Monarch;<sup>111</sup>
- death of the Governor;<sup>112</sup>
- death of a former President;<sup>113</sup>
- death of a minister and a former Premier;<sup>114</sup>
- death of a minister in the Assembly;<sup>115</sup>
- the September 2001 terrorist attack on the United States of America.<sup>116</sup>

The House also adjourned on the outbreak of war following a brief ministerial statement and without proceeding through other items of business.<sup>117</sup>

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109 *LC Minutes* (1/7/1982) 21.

110 *LC Minutes* (1/7/1982) 22.

111 *LC Minutes* (27/2/1952) 233.

112 *LC Minutes* (10/11/1936) 32.

113 *LC Minutes* (18/8/1952) 10.

114 *LC Minutes* (26/2/1985) 304.

115 *LC Minutes* (13/11/1957) 66.

116 *LC Minutes* (12/9/2001).

117 *LC Minutes* (5/9/1939) 238.

The House also adjourned immediately following the tabling of the minutes of a joint sitting held for the purposes of considering a motion of sympathy to the family and friends of victims of the bomb attacks in Bali that occurred on 12 October 2002.<sup>118</sup>

As noted earlier, two sittings commenced and adjourned on the one calendar day on 16 October 1997.<sup>119</sup>

## CONDUCT OF BUSINESS IN THE HOUSE

The conduct of business in the House each sitting day follows an established pattern. Except in the case of unusual adjournments, the House considers routine business each sitting day before proceeding to business of the day.

### Routine of business each sitting day

The routine of business, that is the order in which business is dealt with on a sitting day, is determined by a combination of standing orders, sessional orders and practice. Standing order 38 specifies the order in which business is taken on each sitting day as follows:

- formal business under standing order 44;
- presentation of papers and documents;
- presentation of petitions;
- giving of notices of motions;
- urgency motions;
- ministerial statements;
- ministerial replies to matters raised on the adjournment.

In practice, messages from the Governor and the Assembly and reports tabled by the President are dealt with before formal business under standing order 44.

The standing orders provide that a number of items of business can also be taken at other times during the sittings of the House, including: messages from the Governor,<sup>120</sup> messages from the Assembly,<sup>121</sup> presentation of papers,<sup>122</sup> matters

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118 *LC Minutes* (22/10/2002).

119 *LC Minutes* (16/10/1997). This situation arose from the desire of the House to enable a member to move a contingent notice of motion for leave to be granted for her to table certain documents, notice of which had been given during the first of the two sittings. However, as events transpired the member was not present during the second sitting and the matter did not proceed until the following sitting day.

120 Under standing order 122, messages from the Governor must be reported to the House 'as soon as practicable after receipt'.

121 Under standing order 126, messages from the Assembly must be reported to the House 'as soon as practicable, without interrupting any business before the House'.

122 Under standing order 54, the President, ministers or the Clerk may table documents 'at any time when there is no other business before the House'. Other members may table documents by leave.

concerning the privileges of the House under standing order 77<sup>123</sup> and ministerial statements.<sup>124</sup>

Following the conduct of routine business, the House proceeds to business of the day – that is, items set down on the Notice Paper such as matters of privilege, business of the House, matters of public importance, government business, private members’ business or debate on committee reports.

The various items of routine business are discussed below.

### *Messages from the Governor*

Messages from the Governor must be reported by the President as soon as practicable after their receipt. When a message from the Governor is delivered during a sitting of the House, the business under discussion may be suspended while it is delivered, read and, if necessary, taken into consideration or a future day fixed for its consideration (SO 122).<sup>125</sup> When a message from the Governor is delivered when the House is not sitting, it is the first item reported by the President on the next sitting day. The most common messages from the Governor are assents to bills. Some other messages include those convening joint sittings for the filling of casual vacancies in the House or in the Senate, and the assumption of the administration of government on the Governor being absent from the State or returning to the State.

### *Messages from the Assembly*

Messages from the Assembly are reported to the House at the earliest opportunity without interrupting the business before the House (SO 126(2)). These messages are received by the Clerks at the Table and are handed to the President to be read once there is a break between items of business. There have been occasions when a message has been received from the Assembly during the adjournment debate to terminate a sitting and the President has reported the message before putting the question for the House to adjourn.<sup>126</sup> A message from the Assembly received by

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123 Under standing order 77, a matter of privilege, ‘unless suddenly arising in proceedings before the House’, is to be dealt with according to the procedures set out in that standing order. As part of those procedures, under standing order 77(5) where the President determines that a motion relating to a matter should be given precedence of other business a member may ‘at any time when there is no business before the House, give notice of a motion to refer the matter to the Privileges Committee’.

124 Under standing order 48, a minister may make a statement regarding government policy ‘at any time when there is no other business before the House’.

125 It is unusual for business to be interrupted in order to report a message from the Governor. Generally the message is reported immediately after any business then under consideration is concluded. The last time business was interrupted was in 1870. For examples, see *LC Minutes* (4/12/1856) 30, (12/12/1859) 40-41, (28/9/1870) 37-38.

126 *LC Minutes* (20/3/1986) 701, (3/5/1990) 113, (16-17/4/1991) 139-140, (29/10/1992) 402-403, (3/7/2003) 244-245, (17/11/2005) 1764, (15/12/2005) 1820-1821.

the Clerk when the House is not sitting is reported by the President on the next sitting day, immediately after any messages from the Governor.

The most common messages from the Assembly relate to bills – either responding to a bill which originated in the Council, presenting a bill passed by the Assembly for concurrence or responding to Council amendments to a bill which originated in the Assembly. Other common messages relate to the membership of joint committees.

### *Reports tabled by the President*

A number of statutes require the provision of various reports to the President for tabling in the House.<sup>127</sup> There is nothing in the standing or sessional orders prescribing the time at which the President is to table such reports. It has become established practice that when these reports are received while the House is sitting, the President tables the report between items of business. Reports received when the House is not sitting are tabled by the President on the next sitting day. The President also tables documents concerning the administration of the Parliament, such as the annual report of the Department of the Legislative Council and the annual report of the Joint Services of the Parliament.

### *Formal business*

Under standing order 44, before the House proceeds to the business on the Notice Paper each day, the President will ask if there is any objection to notices of motions or orders of the day for the third reading of a bill to be taken as a formal motion. The only matters that may be dealt with in this way are notices of motions and orders of the day for the third reading of bills.<sup>128</sup> All members present must agree to an item being dealt with as formal business, any one objection being sufficient to prevent it from occurring. The question on a formal motion is put without amendment or debate, although a division can be called.<sup>129</sup>

The procedure followed is that the President calls over the items of business by category, inquiring whether there is any objection to the matters being taken as

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127 See, for example, the *Ombudsman Act 1974*; the *Independent Commission Against Corruption Act 1988*; the *Privacy and Personal Information Protection Act 1988*; the *Health Care Complaints Act 1993*; the *Police Integrity Commission Act 1996*; the *Children and Young Persons (Care and Protection) Act 1998*; the *Commission for Children and Young People Act 1998*; the *Forestry and National Park Estate Act 1998*.

128 It is no longer common for orders of the day for the third reading of bills to be listed as items of business on the Notice Paper, as it has become common practice for the question to be put on the third reading of bills immediately after the adoption of the report of the committee of the whole, or the second reading where leave is granted to proceed immediately to the third reading. This is possible under standing order 141 dealing with committals, and also on the suspension of standing orders and sessional orders to enable the passage of a bill through all stages at the current or any one sitting.

129 Ruling: Lackey, *LC Debates* (9/7/1896) 1423. See, for example, a formal motion concerning publication of a Questions and Answer Paper in the recess, carried on division, *LC Minutes* (22/11/2006) 397.

formal business. In most cases members do object to notices of motions being taken as formal business because they wish the matter to be debated in the House. However, in some cases, generally where prior agreement has been reached between representatives of various parties, a matter will proceed as formal business. Common instances include:

- changes to the membership or reporting dates of a committee;<sup>130</sup>
- granting of leave of absence to a member;<sup>131</sup>
- agreement to a resolution or message in relation to which there is unanimity of opinion in the House;<sup>132</sup>
- orders for the production of State papers.<sup>133</sup>

Contrary to the standing order, in recent years there have been instances where a member has obtained leave to amend a motion before moving it as formal business.<sup>134</sup> These have usually related to the time frame for the return of documents under an order for State papers.

In June 2007, the House adopted a sessional order to vary the procedure under standing order 44. Under the sessional order, a member must request in writing that a notice of motion on the Notice Paper standing in their name be put to the House as formal business by the President the next sitting day. The sessional order provides:

1. Before the House proceeds to the business on the notice paper, the President will ask with respect to each notice of motion, at the request of the member who gave the notice, whether there is any objection to its being taken as a formal motion. If no objection is taken, the motion shall be taken as a formal motion.
2. Formal motions will be taken in the order in which they appear on the notice paper.
3. The request from a member that a notice of motion standing in their name on the notice paper be taken as formal business must be signed by that member and handed to one of the Clerks-at-the-Table during the sitting of the House, on the day before the member wishes the matter to be considered as formal business.
4. The question of a formal motion must be put and determined without amendment or debate.
5. An order of the day for the third reading of bills may be dealt with as a formal motion.

This procedure removes the previous uncertainty that surrounded the identification of items to be considered by way of formal business. Under the previous

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130 See, for example, *LC Minutes* (28/11/07) 375.

131 *LC Minutes* (6/6/2001) 1006.

132 For example, a message of congratulations to an Australian who has made a significant achievement, *LC Minutes* (14/5/1997) 700.

133 See, for example, *LC Minutes* (28/6/2007) 194-196.

134 *LC Minutes* (15/9/2005) 1566, (30/11/2005) 1787, (21/9/2006) 213.



system, motions on the Notice Paper to be dealt with as formal business were often identified to the clerks at very late notice, frequently after the House had met and formal business was already being considered.

The main disadvantage of this procedure is that, if members fail to indicate in writing at the previous sitting that they wish to have an item taken as formal, they lose the opportunity for that day.

### *Presentation of papers and documents*

Papers and documents may be tabled at any time when there is no other business before the House (SOs 42 and 54). The tabling of documents, other than by the President, takes place after formal business and before the presentation of petitions. Documents are tabled first by ministers, then by the chairs of committees, followed by the Clerk. Private members may only table documents by leave of the House.

The tabling of papers and documents is discussed in more detail in Chapter 17 (Documents).

### *Presentation of petitions*

The routine of business provides for the presentation of petitions after the tabling of papers (SO 38). Petitions may not be presented after the House proceeds to the business of the day, except by leave of the House (SO 68(8)).<sup>135</sup>

The presentation of petitions is discussed in more detail in Chapter 17 (Documents).

### *Giving of notices of motions*

The routine of business provides for the giving of notices of motions following the presentation of petitions (SO 38). Notices of motions may not be presented after the House proceeds to the business of the day, except by leave of the House (SO 71(6)).<sup>136</sup>

Notices of motions are discussed in more detail in Chapter 10 (Resolutions, Motions and Amendments).

### *Postponements*

After the formal motions are disposed of and before the business of the day is proceeded with, the President will ask whether any member wishes to postpone

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<sup>135</sup> *LC Minutes* (26/6/1996) 284.

<sup>136</sup> It is not uncommon for leave to be given, especially to notices given by ministers. There are also instances where leave has been refused; see *LC Minutes* (9/12/1997) 197, (23/9/1998) 724 (leave was subsequently granted later during the sitting), (13/12/2001) 1405, (30/11/2005) 1787.

any notice of motion or order of the day of which the member is in charge on the Notice Paper for that day (SO 45). A notice of motion or order of the day may be postponed to a later hour on the same day or a subsequent day, on motion. The question must be put and determined without amendment or debate.

Business may also be postponed, on motion, at the time when it is called on.

### *Urgency motions*

Urgency motions under standing order 201 are generally dealt with at the conclusion of formal business.

Standing order 201 is a procedural device or ‘technical form’ which provides a mechanism for a member to initiate discussion on a matter of urgent public importance, without the need for the House to come to any decision on the matter. The essential character of standing order 201 is that no issue can be determined, but an opportunity is afforded to spotlight some specific matter that, in the opinion of the House, is of sufficient urgency to warrant immediate consideration.

When raising a matter of urgency, the member moves for the House to adjourn to discuss the matter of urgency. The subject to be discussed must be stated in writing to the President before the commencement of the sitting. At the appropriate time in proceedings, the President informs the House that a motion under standing order 201 has been received, at which point the House decides, without amendment or debate, the question of the urgency of the matter being discussed.<sup>137</sup> If urgency is agreed to, the member moves ‘That this House do now adjourn’ and the matter is debated. There are time limits on the speeches of members, although the time limits have been extended by leave of the House.<sup>138</sup> The motion is not open to amendment.<sup>139</sup> At the conclusion of the debate the motion lapses.

Under former standing order 13, at the conclusion of the debate, the motion was withdrawn by leave.<sup>140</sup> However, there was one occasion where objection was taken, the motion was carried to adjourn the House and the sitting was consequently adjourned.<sup>141</sup> There are examples where the motion was put and negatived.

Matters that are moved as an urgency motion under standing order 201 should be framed as a simple and brief statement of the general subject matter.<sup>142</sup>

<sup>137</sup> *LC Minutes* (28/4/1936) 107, (5/12/1967) 250, (16/2/1982) 154, (2/9/2004) 970, (11/10/2005) 1614.

<sup>138</sup> *LC Minutes* (16/2/1982) 154.

<sup>139</sup> *LC Minutes* (19/5/1993) 149-150.

<sup>140</sup> See, for example, *LC Minutes* (19/5/1993) 150.

<sup>141</sup> *LC Minutes* (19/6/2001) 1029-1030.

<sup>142</sup> For example, ‘the alarming increase in the robbery of taxi-drivers by armed men’, *LC Minutes* 114 (19/5/1936) 130; ‘the call by unions for further consultation over proposed changes to workers’ rights regarding compensation for injury sustained in the workplace’, *LC Minutes* (19/6/2001) 1029-1030.

A notice under standing order 201 has been ruled out of order, even though no point of order was taken, on the grounds that the matter as stated dealt with matters which should have been the subject of a substantive motion, as it required the House to express a decision.<sup>143</sup>

There is also one instance in which an urgency motion was superseded by an adjournment of the House. On 20 September 2005, during debate on a motion of urgency under standing order 201 to discuss the Australian Labor Party's attitude toward Aboriginal people, the minister moved, as a motion to supersede the question under discussion, 'That the House do now adjourn'. The latter motion was carried without division.<sup>144</sup>

Standing order 201 has not been used frequently, particularly in recent years. Most members opt to initiate matters of public importance under standing order 200, dealing with matters of public importance, rather than standing order 201. Standing order 200 is discussed later in this chapter. The principal difference between the two is that matters of public importance initiated under standing order 200 require notice to be given at a previous sitting, thereby allowing for the ensuing debate to be generally more informed than in the case of matters of urgency under standing order 201, where the House receives no notice. However, standing order 201 nonetheless provides members with the opportunity to bring matters on suddenly, and as such is known as 'the ultimate ambush' on the government.

Most matters raised under standing order 201 are from opposition or cross-bench members but there have been rare occasions when the government has itself used the procedure.<sup>145</sup>

### *Ministerial statements*

In the routine of business, ministerial statements follow immediately after any proposals under standing order 201 and before ministerial replies to matters raised on the adjournment. Ministerial statements may also be made at any time when there is no business before the House (SO 48). Ministers do not require leave to make such statements.<sup>146</sup> It is not uncommon for ministerial statements to be made at the end of Question Time.

Ministerial statements may be used to:

- notify changes in the Ministry;
- reply to a question on notice;

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<sup>143</sup> *LC Minutes* (3/6/1987) 1057.

<sup>144</sup> *LC Minutes* (20/9/2005) 1583-1584.

<sup>145</sup> For example, on 3 May 2006, the government used an urgency motion to discuss the proposed sale of the Snowy Hydro Ltd. See *LC Minutes* (3/5/2006) 1981, 1984.

<sup>146</sup> This contrasts with the House of Representatives where leave is required for a minister to make a ministerial statement; see *House of Representatives Practice*, 5th edn, p 486. Ministers do not require leave to make a ministerial statement in the House of Commons (UK), but prior notice to the Speaker is required; see *Erskine May*, 23rd edn, p 358.

- announce legislative proposals;
- announce the government's intention to propose a change in the arrangement of government or other business in the House;
- correct remarks made by the minister in answer to a question without notice or in other debate in the House.<sup>147</sup>

From 1988 until 2004, provision was made, through a sessional order, for the Leader of the Opposition, or a member nominated by the Leader of the Opposition, to reply to a ministerial statement for a period not exceeding the time taken by the minister in making the statement.<sup>148</sup> This is now incorporated in standing order 48(2). Although not mandatory, it is not uncommon for a minister making such a statement, particularly if the statement deals with proposed legislation or government policy, to have previously advised the Leader of the Opposition of the nature of the statement to be made.

The President may also make statements to the House on matters of procedure or practice, arrangements concerning the sittings of the House, or the administration of the House or the Parliament.<sup>149</sup> There is no provision for the Leader of the Government, Leader of the Opposition or other members to speak to such a statement.

### *Ministerial replies to matters raised on the adjournment*

Ministers may reply to matters raised in the adjournment debate of the previous sitting (SO 33). Any other member wishing to make a statement about the matter, or to reply to the statement of the minister, must seek leave or use another mechanism, such as the next adjournment debate<sup>150</sup> or, if appropriate, a personal explanation.

There is no requirement for a minister to respond to matters raised in the adjournment debate. This contrasts with the situation in other Houses. For example, in the House of Commons in Westminster, the adjournment debate is effectively a debate involving a single private member chosen by ballot and a minister replying on behalf of the government,<sup>151</sup> while in the House of Commons in Canada there

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147 There is an early President's ruling to the effect that in a ministerial statement a member should refrain from controversial subjects as much as possible. See *LC Hansard* (30/11/1904) 1942. There is also a ruling that in making a ministerial statement a minister is allowed considerable latitude in order to answer certain allegations made by a member against a minister in the other House. See *LC Hansard* (15/9/1915) 1808.

148 Sessional order 22, *LC Minutes* (30/4/2003) 46. Previously, the sessional order provided for not only the Leader of the Opposition, but also the leader of any other party or group where such leadership has previously been announced to the House, or a member nominated by the leader, to make such a statement.

149 For example, on 14 September 2004, the President informed the House of a restructure of the Department of the Legislative Council. See *LC Minutes* (14/9/2004) 976.

150 Ruling: Johnson, *LC Debates* (19/4/1989) 6663.

151 *Erskine May*, 23rd edn, p 379.

is a ministerial response of up to two minutes in length at the conclusion of each four-minute speech on up to five matters raised in the adjournment debate.<sup>152</sup> In the Assembly provision is made for private members' statements to include ministerial replies of up to two minutes to each five-minute speech by a member,<sup>153</sup> although ministers, or parliamentary secretaries, are not required to make a reply.

### **Business of the day**

As indicated, following routine and formal business, the House proceeds to business of the day – that is, items set down on the Notice Paper such as business of the House, matters of public importance, government business, private members' business or debate on committee reports.

### ***Business of the House***

A motion that relates to the business of the House takes precedence over all other motions or business of the day (SO 74). According to practice, business of the House is the first item of business of the day.

The categorisation of a matter as business of the House is significant in that it accords the matter precedence over both government and general business.

Until 2004 there was no comprehensive definition of which matters constitute business of the House. However, under the 2004 standing orders, a motion for a special adjournment or which relates to the privileges or business of the House takes precedence over all other motions or orders of the day (SO 74(3)). Standing order 39 also provides that the following business should be set down as business of the House:

- a motion for leave of absence of a member (SO 39(a));
- a motion concerning the qualification of a member (SO 39(b));<sup>154</sup>
- a motion concerning the operations of the chamber (SO 39(c)), such as a new sessional order.

A motion to disallow a statutory instrument (SO 78)<sup>155</sup> and a motion to adopt a report from the Privileges Committee on a citizen's right of reply (SO 203(7))<sup>156</sup> are also placed on the Notice Paper under business of the House.

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152 *House of Commons Procedure and Practice* (Canada), 2000, p 412.

153 Legislative Assembly standing order 119.

154 See, for example, two notices of motions for the expulsion of the Hon Malcolm Jones, *LC Notice Paper* (16/9/2003) 420.

155 Either House of the Parliament may disallow statutory instruments by notice of motion pursuant to Part 6 of the *Interpretation Act 1987*. Disallowance of statutory instruments is discussed in greater detail in Chapter 14 (Delegated Legislation).

156 A notice of motion to adopt a report from the Privileges Committee is placed on the Notice Paper as business of the House for six sitting days. If it is not dealt with within the six sitting days it is placed on the Notice Paper as general business.

In the Senate, in addition to the matters listed above, a motion to refer a matter to a standing committee is defined as business of the Senate. By special order of the Senate other items of business may also be classified as business of the Senate. Recent practice has been for reports from the Procedure Committee to be classified as business of the Senate.<sup>157</sup>

### *Matters concerning the privileges of the House*

A member may only raise a matter of privilege, unless suddenly arising in proceedings before the House, according to the procedures set out in standing order 77. The procedures for raising a matter concerning the privileges of the House under standing order 77 are set out in Chapter 3 (Privilege).

Before the adoption of standing order 77 in May 2004, the procedure for raising a matter of privilege was contained in the resolution appointing the Privileges Committee, as variously constituted.

A notice of motion or order of the day concerning a matter of privilege appears as the first item on the Notice Paper.

### *Matters of public importance*

Standing order 200 provides an opportunity for a member to give a notice of motion for a matter of public importance to be debated by the House without the House having to resolve the matter in any particular way. This is an exception to the rule that substantive motions are used to elicit an opinion of the House.

When the matter is called on, the House first decides on the question, without amendment or debate, that the matter proceed forthwith. If agreed, time limits apply to speeches and the discussion must not exceed one hour and 30 minutes.<sup>158</sup> As there is no question before the House, at the conclusion of the debate the matter lapses and the House proceeds to the next item on the Notice Paper.

Only one matter of public importance may be dealt with on any sitting day, although this is not to preclude the resumption of an adjourned discussion on the same day (SO 200(7)).

### *Government business*

Government business includes all matters initiated by a minister or parliamentary secretary exercising the powers of a minister under standing order 25, and mainly consists of items relating to the government's legislative program.

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<sup>157</sup> *Odgers*, 11th edn, p 159.

<sup>158</sup> The overall debate is limited to one hour and 30 minutes; the member proposing the matter, the minister first speaking and the Leader of the Opposition or member nominated by the Leader of the Opposition, when the matter is proposed by a member of the government, have 15 minutes; and each other speaker, including the proposer in reply, has 10 minutes.

*General or private members' business*

General business, also known as private members' business, is business initiated by members who are not ministers or parliamentary secretaries.

The term private member is not defined in the standing orders of the Council.<sup>159</sup> This leaves open the question of which members may introduce private members' business. Under the standing orders any member may give notice of an item of private members' business for debate during the session (SO 183). *Odgers* states that ministers occasionally initiate business 'with an indication that they do so in a private and not a ministerial capacity' and that such business is entered into the Notice Paper as general business.<sup>160</sup> However, *House of Commons Procedure and Practice* (Canada) indicates that ministers, parliamentary secretaries and Presiding Officers have generally abstained from sponsoring or pursuing private members' business and that, on being appointed, parliamentary secretaries have withdrawn or requested a change in the sponsorship of an item of private members' business standing in their name.<sup>161</sup>

In New South Wales, this issue arose in relation to the Callan Park (Special Provisions) Bill 2002, introduced into the Assembly by a member who was both a minister and whose electorate included the site which was the subject of the bill. Following the bill's introduction and media reports quoting the member as saying that 'the Government would support her private members' bill',<sup>162</sup> the bill appeared on the Assembly Notice Paper as government business.<sup>163</sup> When the bill reached the Council it was also listed on the Council Notice Paper as government business.<sup>164</sup>

Private members' business is dealt with according to a system of precedence. Under this system, the House considers items of private members' business in the sequence established by a draw conducted by the Clerk at the beginning of the session (SOs 183-189). As the House disposes of items, further ballots are conducted to ensure there are sufficient items, up to a limit of 12, in the order of precedence.

This arrangement was first adopted according to sessional order on 8 September 1999 in order to provide a more efficient and equitable method of dealing with private members' business. The sessional order was re-adopted each subsequent session with some minor modifications, and was finally adopted as a standing order in May 2004.<sup>165</sup>

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159 House of Representatives standing order 28D(f) defines a private member as any member of the House other than the Speaker, a minister or a parliamentary secretary.

160 *Odgers*, 11th edn, p 160.

161 *House of Commons Procedure and Practice* (Canada), 2000, pp 889-890.

162 'Backflip on Callan Park land sale', *Daily Telegraph*, 21 October 2002, p 9.

163 *LA Notices* (24/10/2002) 1167.

164 *LC Notice Paper* (13/11/2002) 1725.

165 The procedures are similar to a system operating in the Canadian House of Commons.

Under the system of precedence, notices of motions when first given appear under 'private members' business – items outside the order of precedence' in the order given. The items selected in the draw are then shown under 'private members' business – items in the order of precedence'.

The procedure for conducting the draw for private members' business under the standing orders is as follows:

- A random draw of 12 members' names is conducted in the order of government, opposition and cross-bench members. Only members with an item on the Notice Paper outside the order of precedence are included in the draw.
- A member is not included in the random draw of names if the member already has an item listed in the order of precedence, or has previously been selected in a draw and had an item of business disposed of when there are other members in the same group (government, opposition, cross-bench) with notices on the Notice Paper who have not previously been selected in the draw.
- A member whose name is drawn may transfer their turn to another member who does not have an item of private members' business in the order of precedence. Where this occurs both the member whose name was drawn and the member who receives the transfer are ineligible to be included in the draw until all other members in the same group have been selected in the draw. Once a member has an item in the order of precedence, they cannot then transfer their turn to another member.
- Each member whose name is drawn and who has more than one notice of motion on the Notice Paper notifies the Clerk which of his or her notices of motions is to be placed in the order of precedence. If a member does not notify the Clerk within two working days, the first motion standing on the Notice Paper in the name of the member is included in the order of precedence.

Before the adoption of this procedure it was not uncommon for members to give notices of motions for specific sitting days in an attempt to get precedence over other items of private members' business already on the Notice Paper.

The establishment of an order of precedence for private members' business does not prevent a member from giving further notices of motions that are then listed on the Notice Paper under items outside the order of precedence in the order given.

An item of private members' business listed in the order of precedence may be postponed. However, an item postponed for a third time is removed from items in the order of precedence and set down at the end of private members' business items outside the order of precedence unless the House otherwise orders (SO 188).



## CONDUCT OF PROCEEDINGS

According to established practice, private members may give only one notice of motion on each call from the Chair. When a notice is withdrawn and re-given by a private member it loses its precedence on the Notice Paper. This applies even when the notice has been included within items in the order of precedence.

Debate on items of private members' business is subject to time limits set out in standing orders 186 and 187.

The debate on an item other than a bill must not exceed three hours. The mover of the motion may speak for not more than 30 minutes and other members may speak for not more than 20 minutes. The debate on a private member's motion is interrupted 15 minutes before the end of the time provided to allow the mover of the motion to speak in reply for not more than 10 minutes and for the President to put all questions necessary to dispose of the motion.

Debate on the question 'that leave be given to bring in a bill' is limited to one hour, the mover and each other member speaking for not more than 10 minutes. The debate is interrupted 10 minutes before the end of the time for debate to allow the mover to speak in reply for not more than 10 minutes. There is no overall time limit on debate on the motion that a bill be read a second time, but the mover may speak for not more than 30 minutes and 20 minutes in reply and any other member may speak for not more than 20 minutes.

The House has determined that general business takes precedence on Thursday each week until 5.00 pm. However, it is common that, at the end of a session, the House will agree to government business taking precedence on Thursdays due to the volume of government bills to be considered before the recess.

### *Debate on committee reports*

On tabling of a report from a committee, a motion may be moved without notice 'That the House take note of the report' (SO 232(1)). During or at the conclusion of the speech of the mover, the debate is adjourned to the next day on which debate on committee reports has precedence. Unless otherwise ordered, the order of the day for the resumption of debates on committee reports is to be set down on the Notice Paper in the order in which the reports were presented.

The debate on committee reports on any day on which the debate has precedence is to be interrupted after one hour. The interrupted debate is to stand adjourned and be set down on the business paper for the next day on which it has precedence.

Each speaker in the debate on committee reports is to be limited to 10 minutes, except the committee chair, who is allowed 15 minutes and a further 10 minutes in reply.

Under the current sessional orders, debate on committee reports takes precedence on Wednesday for one hour after Question Time.

*Precedence of business of the day*

Standing orders 40 and 41 provide that the House must from time to time appoint the day or days on which government business, general business and debate on committee reports will have precedence. The House has determined that government business takes precedence on Monday, Tuesday, Wednesday and Friday, and after 5.00 pm on Thursday, and that private members' business takes precedence until 5.00 pm on Thursday each sitting week.<sup>166</sup>

During periods when the government has had a majority in the Council, the sessional order determining the precedence of business on particular days has been the basis of the government's control over the business of the House, subject to the precedence accorded to various matters under certain standing orders or sessional orders.<sup>167</sup> However, in the period since 1988 when no government has had a majority in the Council, under the sessional order for precedence of business the time allocated to general business has increased. In addition, it has become increasingly common for the government to lose control of the proceedings of the House for a period on at least one of the days on which government business takes precedence each week, following a majority vote to suspend standing and sessional orders to bring on an item of general business. On the other hand, it is not uncommon, towards the end of a sitting period, for government business to take precedence on Thursdays, when private members' business would normally have precedence.<sup>168</sup>

During the autumn sittings in 2005, a sessional order was adopted that varied the days and times on which government and private members' business had precedence.<sup>169</sup> This followed a review by the Clerk of business hours and sitting times in other parliaments, where it was noted that a number of Houses had adopted major changes, especially in relation to 'family-friendly' sitting times and a more structured routine of business.<sup>170</sup> The sessional order provided for the House to meet earlier each day – at 2.00 pm on Tuesday, and 10.00 am on Wednesday and Thursday. Private members' business was conducted as the first business each sitting day after the completion of formalities and until the commencement of Question Time. Debate on committee reports and budget estimates took place after the dinner break on Tuesday evenings, and lunch and dinner breaks were restricted to one hour.

It was anticipated that these changed arrangements would result in fewer disruptions to government business by the suspension of standing orders to call on private members' business, since there was an opportunity each sitting day for

166 *LC Minutes* (23/5/2006) 21, (10/5/2007) 52.

167 For example, under sessional order adopted 19 September 1984, General Business took precedence of Government Business on Thursdays after Question Time, which commenced at 2.30 pm. *LC Minutes* (19/09/84) 92.

168 *LC Minutes* (15/11/2006) 346-347.

169 *LC Minutes* (6/5/2005) 1372-1373.

170 These changes included fewer sitting nights, fixed times for the adjournment of the House, shorter or no meal breaks, earlier commencement of sittings, and fixed times for various categories of business.

such private members' business to be called on. In reality, although there was a reduction in the number of suspensions to deal with unscheduled business, the changes did not prevent the practice of private members seeking to deal with private members' business in government business time. In addition, the intention to move the adjournment of the House at 10.30 pm on Tuesdays, and at 6.30 pm on Wednesdays and Thursdays was abandoned as the session drew to a close and the usual backlog of legislation resulted in increasingly later adjournments. The sessional order applied until the adjournment of the House for the winter recess, a total of nine sitting days, and was not re-adopted in the subsequent spring sitting.

### Questions without notice

According to sessional order, Question Time commences at 4.00 pm on Monday and Tuesday and 12.00 noon on Wednesday, Thursday and Friday, unless the House decides otherwise.<sup>171</sup> The standing orders do not limit the duration of Question Time each day but generally after one hour the Leader of the Government asks that further questions be placed on the Questions and Answers Paper.

Under SO 64, a member may put questions to:

- a minister in relation to the public affairs with which the minister is officially connected, to proceedings pending in the House or to any matter of administration for which the minister is responsible;
- other members relating to any bill, motion or other business on the Notice Paper of which the member has charge;
- a chair of a committee relating to the activities of that committee, but the question must not attempt to interfere with the committee's work or anticipate its report.

The vast majority of questions are directed to ministers. Ministers are responsible for answering not only questions on their own portfolio responsibilities but on portfolios held by ministers in the Assembly for which they have been allocated responsibility.

The standing orders set out various rules for questions. Questions must not contain arguments, inferences, imputations, epithets, ironical expressions, hypothetical matters or statements of fact or names of persons unless they are strictly necessary to render the question intelligible and can be authenticated. Questions must not

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<sup>171</sup> There have been occasions when other business of the House has superseded Question Time. For example, on 15 December 2005, consideration of government business took precedence over all other business, including questions, to enable the House to consider the Law Enforcement Legislation Amendment (Public Safety) Bill 2005, introduced by the government in response to riots in Cronulla on 11 December 2005; see *LC Minutes* (15/12/2005) 1819. Similarly, the House did not proceed to Question Time or any other business following the moving of a condolence motion on 12 September 2001 in response to the terrorist attacks on the United States of America on 11 September 2001; see *LC Minutes* (12/9/2001) 1146.

ask for an expression of opinion, for a statement or announcement of the government's policy or for a legal opinion. Questions also must not refer to debates in the current session or proceedings in committee not yet reported to the House. Questions must not anticipate discussion on an order of the day or other matter on the Notice Paper, except an item of private members' business outside the order of precedence or an order of the day relating to the budget estimates (SO 65).<sup>172</sup>

All questions should be framed in interrogative terms. The use of phrases such as, 'Is it a fact ...' suggests that the question is seeking an opinion or giving information. Instead a question should be phrased 'what, where, will, why, when, does, is ...?'

There is no limit on the number of questions a member may ask, either with or without notice.<sup>173</sup>

At the commencement of Question Time, the President asks: 'Are there any questions?' Members stand in their places to attract the President's attention. A practice has been established that the first call is generally given to the Leader of the Opposition. The call is then alternated between government, cross-bench and opposition members.

The time taken by members to ask a question without notice is limited to one minute and an answer by ministers to four minutes (SO 64(a)). At the discretion of the President, one supplementary question to seek elucidation on an answer may immediately be put by the member who asked a question. In asking a supplementary question the member has one minute and the minister has two minutes to answer (SO 64(b)).<sup>174</sup>

*Erskine May* describes Question Time as not a time for debate, but one for seeking information. Questions should therefore be short, to the point and relate to the responsibilities of the minister concerned. Questions must not contain unnecessary detail, or contain arguments, expressions of opinion, inference or imputations, or offensive expressions. Questions also inadmissible are those which seek the solution of hypothetical propositions, raise questions of policy too large to be dealt with in an answer, seek information on matters of past history for the purpose of argument, are multiplied with slight variation on the same point, or are trivial, vague or meaningless.<sup>175</sup>

172 See Chapters 10 and 11 for more discussion of the rule of anticipation.

173 The Queensland Parliament does place a limit on the number of questions that may be asked by a member. Under standing order 113 of the Queensland Parliament, each member may ask a minister one question without notice each sitting day in the time allocated for Question Time, except for the Leader of the Opposition who may ask two questions without notice. Under standing order 114, each member may also ask one question on notice each sitting day. See Legislative Assembly of Queensland, *Standing Rules and Orders of The Legislative Assembly*, 31 August 2004.

174 These time limits were first introduced as a sessional order adopted on 12 March 2002 and subsequently incorporated in the 2004 standing orders.

175 *Erskine May*, 23rd edn, pp 344-348.

From time to time, Presidents have made statements about the length and nature of questions without notice. For example, on 21 September 1995, President Willis made the following statement to the House:

Honourable members are reminded that the purpose of questions without notice is to elicit information from Ministers of the Crown concerning the public administration of the State. Although it is customary for members to preface questions with a setting for their questions, such prefaces should be contained and not made a feature providing information that is otherwise publicly available.<sup>176</sup>

On 28 October 1999, President Burgmann made a statement to the House indicating that she was concerned about the excessive length of many questions asked during Question Time. Accordingly, the President indicated that if members asked questions which were excessively lengthy or included too much detailed information, she would rule that they be placed on the Questions and Answer Paper.<sup>177</sup>

Presidents have also made statements on the nature of supplementary questions. On 4 April 2000, President Burgmann made the following statement:

[S]upplementary questions are allowed, within reasonable limits, in order to elicit further information on a question which a member feels has not been effectively answered. Supplementary questions must be actually and accurately related to the original question and must relate to or arise from the answer given. They are not an opportunity to ask another question.

Over the years there have been numerous rulings by Presidents Johnson and Willis which have stated that supplementary questions must not be a restatement of the original question, nor seek to ask a question not arising from the answer given.<sup>178</sup>

A minister can answer a question in any way he or she sees fit as long as the answer is relevant (SO 65(5)). If necessary, a minister may indicate that he or she will seek additional information in response to a question, and provide the House with a response at a later time. Answers to questions without notice lodged with the Clerk by a minister are published in Hansard.<sup>179</sup> A minister may transfer a question to another minister in whose area of responsibility the question lies.<sup>180</sup>

It has been the practice for many years that the Leader of the Government may answer any question.<sup>181</sup> If the Leader of the Government wishes to answer a question, he or she can do so either in their capacity as Leader of the Government or in their capacity as the minister to whom the question should have been directed.<sup>182</sup>

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176 *LC Debates* (21/9/1995) 1258.

177 *LC Debates* (28/10/1999) 2203-2204.

178 *LC Debates* (4/4/2000) 3970-3971.

179 See, for example, *LC Minutes* (24/6/2003) 154.

180 *LC Debates* (9/12/2004) 13652.

181 *LC Debates* (16/9/2003) 3282.

182 *LC Debates* (17/11/2004) 12957.

Ministers may also refer a question without notice to the appropriate minister in the Assembly for an answer. If a question is referred to a minister in the Assembly, the minister in the Council must provide the answer to the House within 35 calendar days of the date the question was asked. If the answer is not provided within that timeframe, the minister concerned is called on in the House to explain, given three days to provide the answer, then called on again to explain if an answer has still not been provided. This procedure continues until an answer is provided.

If an answer to a question without notice is not provided within 35 calendar days, but when provided is accompanied by an explanation of the reasons for the late provision of the answer, the late provision will not be reported to the House (SO 66).<sup>183</sup>

Unlike the Senate, there is no provision in the Council standing orders for the moving of a motion at the end of Question Time to take note of answers.

### **Adjournment debate**

As noted previously, generally speaking, the House can be adjourned only by its own resolution. The adjournment of the House to terminate a sitting may be moved at any time by a minister or a parliamentary secretary.

Under standing order 31, provision is made for a debate on the motion for the termination of the sitting of the House. The whole debate is limited to 30 minutes, during which time a member may speak on almost any matters for up to five minutes.<sup>184</sup>

The debate provides members with an opportunity to bring pressing matters before the House and to the attention of the Government (in much the same way as private members' statements in the Assembly).

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183 *LC Debates* (28/2/2006) 20671, (5/4/2005) 14966-14967, (24/5/2005) 15925, (31/8/2004) 10477.

184 The adjournment debate was first introduced in 1988, when provision was made in sessional orders for a debate of up to 15 minutes' duration, effectively allowing three members to speak for up to five minutes' duration. This was increased to 30 minutes in 1996, allowing up to six members to speak.